

STATE OF OKLAHOMA

2nd Session of the 50th Legislature (2006)

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 2538

By: Peterson (Pam)

COMMITTEE SUBSTITUTE

An Act relating to adoption; amending 10 O.S. 2001, Sections 7503-3.1 and 7505-2.1, which relate to adoption of minors; modifying method of in-hand service; clarifying certain term; adding certain person for applicability of act; requiring certain waiver be in writing; amending 21 O.S. 2001, Sections 865 and 866, which relate to trafficking in children; adding certain definitions; modifying certain definition; adding certain conduct considered to be the crime of trafficking in children; providing penalty; classifying person subject to certain compliance; providing an effective date; and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 10 O.S. 2001, Section 7503-3.1, is amended to read as follows:

Section 7503-3.1 A. 1. Before or after the birth of a minor born out of wedlock, the Department of Human Services, a licensed child-placing agency, or an attorney representing prospective adoptive parents of the minor may, by in-hand service to the putative father or certified mail to the putative father, to be signed by the putative father only, notify or cause to be notified a putative father of the minor that the mother of the child is considering an adoptive placement for the minor through a Notice of Plan for Adoption. ~~If service of the Notice of Plan for Adoption is made by in-hand service, delivery of the Notice must be made by a person licensed to make service of process in civil cases~~ When notice is made under this section by in-hand delivery to the putative father, the service may be made by any person over the age

of eighteen (18) and such person shall sign an affidavit of service to be filed with the court; provided that, where proper service has been made, the absence of the affidavit of service shall not invalidate the service. Residence service delivered to or signed by a person residing in the home of the putative father or any other forms of substitute service shall not be sufficient service pursuant to this subsection.

2. Service of a Notice of Plan for Adoption may be served in the manner permitted in this subsection upon a putative father within this state or outside of this state.

B. The Notice of Plan for Adoption shall include the following:

1. The identity of the mother, that she is pregnant and the estimated date of birth, that the notified person may be the father of the minor, and that a plan for the adoption of the minor is being considered by the mother;

2. A preaddressed form for filing by mail or in person with the Paternity Registry of the Department of Human Services and a copy to be returned to the attorney or agency who sent it. On this form, the recipient shall sign the form and indicate one of the following choices:

- a. "I do not know if I am the father of this minor. I desire to receive notice of the adoption proceedings or the proceeding to terminate parental rights. I understand that this creates no evidence that could be introduced in court to prove paternity. Its only legal effect is to entitle me to notice, at the address listed on the form, of an adoption proceeding that may be filed after the birth of the minor."
- b. "I hereby file my notice of intent to claim paternity. I understand that a notice of intent to claim paternity may be revoked at any time by filing a notice to disclaim with the Paternity Registry of the

Department of Human Services. I also understand that an unrevoked notice of intent to claim paternity may be used as evidence in any future court proceeding in which it may be relevant, including a child support proceeding. I desire to receive notice of the adoption proceeding or the proceeding to terminate parental rights."

- c. "I acknowledge paternity. I understand that this acknowledgement of paternity cannot be revoked and may be used as evidence in any future court proceeding in which it may be relevant, including a child support proceeding. I desire to receive notice of the adoption proceeding or the proceeding to terminate parental rights."
- d. "I deny paternity. I am not the father of the minor and I do not want to receive notice of any adoption proceeding, or proceeding to terminate my parental rights regarding the minor. I understand that I am waiving and surrendering any parental rights in relation to the minor in connection with the adoption of the minor. I understand that my consent to the adoption will not be required."
- e. "I may or may not be the father of the minor. I do not want to receive notice of any adoption proceeding, or proceeding to terminate my parental rights regarding the minor. I understand that I am waiving and surrendering any parental rights in relation to the minor in connection with the adoption of the minor. I understand that my consent to the adoption will not be required."

3. In addition, the Notice of Plan for Adoption shall inform the putative father that:

- a. if the form is not received by the Department of Human Services or the attorney or child-placing agency sending it within thirty (30) days from the date that the Notice of Plan for Adoption is served, the failure to file the form shall constitute:
- (1) a waiver of the right to receive further notice of any adoption proceedings or proceedings to terminate parental rights, if any, that may be filed regarding the minor,
 - (2) a denial of interest in the minor, which denial shall result in the court's termination of the notified party's parental rights to the minor and approval of an adoption without his consent if an adoption proceeding is filed regarding the minor and the adoption is approved by the court,
- b. if the form is received by the Paternity Registry of the Department of Human Services or the attorney or child-placing agency sending it within thirty (30) days of the date of service of the Notice of Plan for Adoption, and it indicates that any of the options specified in subparagraphs a, b and c of paragraph 2 of this subsection have been chosen, the notified person shall have a right to receive notice of any adoption proceedings or any termination of parental rights proceedings that may be filed regarding the minor, at the address given by the putative father on the form, or at an address later provided to the Paternity Registry of the Department of Human Services. The return of the form to the Paternity Registry of the Department of Human Services or the attorney or child-placing agency sending the form is the only action by which the notified person will

retain the right, if any, to notice of adoption or termination of parental rights proceedings regarding the minor,

- c. the filing of the enclosed form shall not, by itself, constitute the bearing of parental responsibilities, and shall not, by itself, establish parental rights,
- d. the filing of the enclosed form or the failure to file the enclosed form shall not affect the duty to support the mother or child during the pregnancy or after the delivery of the minor,
- e. if a petition to adopt the minor is not filed within twelve (12) months of the placement of the minor for adoption, failure to mail the enclosed notice form shall not affect the notified person's parental rights and responsibilities,
- f. the failure to give such notice shall not be grounds available to the father to establish that he was denied knowledge of the pregnancy, and
- g. receipt by a putative father of a Notice of Plan for Adoption or return of the form does not obligate the mother of the minor to proceed with an adoptive placement of the minor.

C. If the form is not received by the Paternity Registry of the Department of Human Services, the attorney or child-placing agency within thirty (30) days from the date that the Notice of Plan for Adoption is served, the failure to file the form shall constitute:

1. A waiver of the right to receive further notice of any adoption proceedings or proceedings to terminate parental rights, if any, that may be filed regarding the minor; and

2. A denial of interest in the minor, which denial shall result in the court's termination of the notified party's parental rights to this minor and approval of an adoption without his consent if an

adoption proceeding is filed regarding this minor and the adoption is approved by the court.

D. If the form is received by the Paternity Registry of the Department of Human Services, or the attorney or child-placing agency within thirty (30) days of the date of service of the Notice of Plan for Adoption, and it indicates that any of the options specified in subparagraphs a, b and c of paragraph 2 of subsection B of this section have been chosen, the putative father shall have a right to receive notice of any adoption proceedings or any termination of parental rights proceedings that may be filed regarding the minor, at the address of the putative father given on the form, or at an address later provided to the Paternity Registry of the Department of Human Services. The return of the form to the Paternity Registry of the Department of Human Services, or the attorney or child-placing agency sending the form within thirty (30) days is the only action by which the notified person will retain the right, if any, to notice of adoption or termination of parental rights proceedings regarding the minor.

E. The filing of the enclosed form shall not, by itself, constitute the bearing of parental responsibilities, and shall not, by itself, establish parental rights.

F. The filing of the enclosed form or the failure to file the enclosed form shall not affect the duty to support the mother or minor during the pregnancy or after the delivery of the minor.

G. If a petition to adopt the minor has not been filed within twelve (12) months of placement of the minor for adoption, failure to mail the enclosed notice form shall not affect the notified person's parental rights and responsibilities.

H. The failure to give such notice shall not be grounds available to the father to establish that he was denied knowledge of the pregnancy.

I. Receipt by a putative father of a Notice of Plan for Adoption or return of the form does not obligate the mother of the minor to proceed with an adoptive placement of the minor.

SECTION 2. AMENDATORY 10 O.S. 2001, Section 7505-2.1, is amended to read as follows:

Section 7505-2.1 A. 1. Prior to the filing of a petition for adoption, ~~an~~ a child-placing agency, attorney, or prospective adoptive parent to whom a ~~mother~~ parent having legal custody has executed a consent to adoption or has permanently relinquished a minor born out of wedlock may file a petition for the termination of the parental rights of a putative father or a parent of the child. The petition shall be filed with the district court of the county in which the relinquishment was executed or in the county in which the putative father, a parent, the petitioner, or the minor resides at the time of the filing of the petition.

2. The affidavit of expenses required by subsection A of Section 7505-3.2 of this title is not required to be attached to a petition filed pursuant to this section, nor must it be filed prior to issuance of an order terminating parental rights entered in a proceeding brought under this section.

B. 1. Notice of the hearing on the petition to terminate parental rights and a copy of the petition shall be served upon ~~the~~ such putative father or a parent in the same manner as summons is served in civil cases, not less than fifteen (15) days prior to the hearing.

2. The notice shall contain the name of the putative father or parent, or if unknown, the name of the minor, the date of birth of the minor, the date of the hearing, and the ground or grounds for which termination of parental rights is sought. The notice shall apprise the putative father or parent of his or her legal rights and shall include a clear statement that failure to appear at the hearing shall constitute a denial of interest in the minor which

denial may result, without further notice of this proceeding or any subsequent proceeding, in the termination of his or her parental rights and the transfer of the ~~minor's~~ care, custody or guardianship of the minor or in the ~~minor's~~ adoption of the minor.

3. If the identity or whereabouts of a putative father or parent is unknown, the court must determine whether the putative father or parent can be identified or located. Following an inquiry pursuant to Section 7505-4.3 of this title, if the court finds that the identity or whereabouts of the putative father or parent cannot be ascertained, and this fact is attested to by affidavit of the consenting or permanently relinquishing mother person or the legal custodian or guardian of the child, it shall order that notice be given by publication and, if the identity is known, that a copy be mailed to the last-known address of the putative father or parent. The notice shall be published once pursuant to the laws relating to service of notice by publication, in the county in which the action to terminate parental rights is brought, and the hearing shall not be held for at least fifteen (15) days after publication of the notice. When notice is given by publication, the order terminating parental rights shall not become final for a period of fifteen (15) days from the date of the order.

4. A putative father or parent may waive ~~his~~ the right to notice pursuant to this section. The waiver ~~signed by the putative father~~ shall be in writing and shall include a statement affirming that the ~~putative father~~ person signing the waiver understands that the waiver shall constitute grounds for the termination of the parental rights of such ~~putative father~~ person pursuant to the provisions of this section and Section 7505-4.2 of this title. A putative father or legal or biological father may also waive his right to notice pursuant to this section, by signing an extrajudicial consent pursuant to Section 7503-2.6 of this title, or by waiving notice on a form filed with the Paternity Registry of the

Department of Human Services, or by failing to register with the Paternity Registry of the Department of Human Services after receiving a Notice of Plan for Adoption pursuant to Section 7503-3.1 of this title.

C. When a putative father or parent appears at the hearing and desires counsel but is indigent and cannot for that reason employ counsel, the court shall appoint counsel. In all counties having county indigent defenders, the county indigent defenders shall assume the duties of the representation in such proceedings.

D. At the hearing on the petition to terminate parental rights brought pursuant to this section, the court may, if it is in the best interest of the minor:

1. Accept a permanent relinquishment or consent to adoption executed by the putative father or parent of the minor pursuant to Sections 7503-2.1, 7503-2.3 and 7503-2.4 of this title; or

2. Terminate any parental rights which the putative father or parent may have upon any of the grounds provided in Section 7505-4.2 of this title for declaring a consent unnecessary.

E. 1. If the court at the hearing determines that the putative father is the biological father of the minor, that the adoption requires the consent of the putative father, that the putative father will not consent, and the court does not terminate the parental rights of the putative father or does not terminate the rights of the other parents, then the court shall schedule a separate hearing to issue an appropriate order for the legal and physical custody of the minor according to the best interests of the minor, if the court has jurisdiction to issue a custody order. Provided, no such hearing shall be scheduled if a preexisting custody order remains in effect.

2. The court shall certify that the child-placing agency or the attorney who filed the petition to terminate parental rights, the putative father, the parent, and any prospective adoptive parents

have received notice of the date of the custody hearing at least fifteen (15) days prior to the date of the hearing. A ~~biological mother~~ parent having legal custody who has signed a consent or permanent relinquishment must be served with notice of the date of the custody hearing, by the party who filed the petition for termination, in the same manner as summons is served in civil cases at least fifteen (15) days prior to the date of the hearing.

3. Upon motion to intervene, the court shall join any person or entity entitled to notice under paragraph 2 of this subsection who is not already a party to the proceeding.

4. At the hearing, the court may award custody to the biological mother, the biological father, the biological parents, if they are married, a parent, the prospective adoptive parent, or the Department of Human Services or other licensed child-placing agency, if the Department or agency had legal custody when the petition was filed, according to Section 21.1 of this title, in the best interests of the child.

5. The child shall be represented at this hearing by an attorney pursuant to Section 7505-1.2 of this title.

F. The court shall terminate the rights of a putative father or parent if ~~he~~ the person fails to appear at the hearing on the petition to terminate ~~his~~ parental rights or if ~~he has waived a~~ waiver of notice pursuant to paragraph 4 of subsection B of this section has been filed with the court.

G. No order of the court shall be vacated, set aside, or annulled upon the application of any person who was properly served with notice in accordance with this section but failed to appear unless the applicant can establish by clear and convincing evidence that such failure to appear was due to unavoidable circumstances. Such application must be filed within ten (10) days of the date of the hearing at which the applicant failed to appear. No order of the court shall be vacated, set aside, or annulled upon the

application of any person who waived notice pursuant to paragraph 4 of subsection B of this section.

H. A proceeding pursuant to this section for termination of parental rights shall be heard by the court without a jury.

I. An appeal may be taken from any final order, judgment, or decree rendered pursuant to this section to the Supreme Court by any person aggrieved thereby, in the manner provided for appeals from the court as provided in this subsection.

1. In an appeal concerning the termination of parental rights pursuant to this section, the ~~appellant's~~ designation of record by the appellant shall be filed in the trial court within ten (10) days after the date of the judgment. ~~Appellee's~~ The counter designation of record by the appellee shall be filed in the trial court ten (10) days after ~~appellant's~~ designation of record by the appellant is filed in the trial court.

2. All appeals of cases concerning the termination of parental rights pursuant to this section shall be initiated by filing a petition in error in the Supreme Court within thirty (30) days of the filing of the order, judgment, or decree appealed from. The record on appeal shall be completed within thirty (30) days from the filing of the petition in error. Any response to the petition in error shall be filed within twenty (20) days from the filing of the petition in error.

3. The briefing schedule is established as follows:

- a. ~~appellant's~~ brief in chief of the appellant shall be filed twenty (20) days after the trial court clerk notifies all parties that the record is complete and such notice has been filed in the office of the Clerk of the Supreme Court,
- b. ~~appellee's~~ an answer brief of the appellee shall be filed fifteen (15) days after the ~~appellant's~~ brief in chief of the appellant is filed, and

c. ~~appellant's~~ a reply brief of the appellant may be filed within ten (10) days after the ~~appellee's~~ answer brief of the appellee is filed.

J. The pendency of an appeal shall not suspend the order of the district court regarding a minor, nor shall it remove the minor from the custody of that court or of the person, institution, or agency to whose care such minor has been committed, unless the Supreme Court shall so order.

K. Any appeal when docketed should have priority over all cases pending on said docket. Adjudication of the appeals and in any other proceedings concerning the relinquishment of the child or the termination of parental rights pursuant to this section shall be expedited by the Supreme Court.

L. 1. The preadoption termination of parental rights pursuant to this section terminates the parent-child relationship, including the ~~parent's~~ right of the parent to the custody of the child and the ~~parent's~~ right of the parent to visit the child, the ~~parent's~~ right of the parent to control the ~~child's~~ training and education of the child, the necessity for the parent to consent to the adoption of the child, the ~~parent's~~ right of the parent to the earnings of the child, and the ~~parent's~~ right of the parent to inherit from or through the child. Provided, that this subsection shall not in any way affect the right of the child to inherit from the parent.

2. Termination of parental rights shall not terminate the duty of the putative father or parent whose rights have been terminated to support the child unless the court determines ~~he~~ the person is not the ~~biological father~~ parent. The duty of a putative father or parent to support ~~his~~ the minor child shall not be terminated until such time as a final decree of adoption has been entered.

SECTION 3. AMENDATORY 21 O.S. 2001, Section 865, is amended to read as follows:

Section 865. As used in this Act the terms hereinafter enumerated shall have the following meanings:

1. "Child" means an unmarried or unemancipated person under the age of eighteen (18) years;

2. "Child-placing agency" means any child welfare agency licensed pursuant to the Oklahoma Child Care Facilities Licensing Act and authorized to place minors for adoption;

3. "Birth parent" means a parent of a child being placed for adoption and includes, but is not limited to, a woman who is pregnant or who presents herself as pregnant and who is offering to place her child, born or unborn, for adoption;

4. "Person" means any natural person, corporation, association, organization, institution, or partnership;

5. "Department" means the Department of ~~Public Welfare~~ Human Services; and

6. "Foster home" means a home or other place, other than the home of a parent, relative within the fourth degree, or guardian of the child concerned, wherein a child is received for permanent care, custody

SECTION 4. AMENDATORY 21 O.S. 2001, Section 866, is amended to read as follows:

Section 866. A. 1. The crime of trafficking in children is defined to consist of any of the following acts or any part thereof:

- a. the acceptance, solicitation, offer, payment or transfer of any compensation, in money, property or other thing of value, at any time, by any person in connection with the acquisition or transfer of the legal or physical custody or adoption of a minor child, except as ordered by the court or except as otherwise provided by Section 7505-3.2 of Title 10 of the Oklahoma Statutes,

- b. the acceptance or solicitation of any compensation, in money, property or other thing of value, by any person or organization for services performed, rendered or purported to be performed to facilitate or assist in the adoption or foster care placement of a minor child, except by the Department of Human Services, a child-placing agency licensed in Oklahoma pursuant to the Oklahoma Child Care Facilities Licensing Act, or an attorney authorized to practice law in Oklahoma. The provisions of this paragraph shall not prohibit an attorney licensed to practice law in another state or an out-of-state licensed child-placing agency from receiving compensation when working with an attorney licensed in this state who is, or when working with a child-placing agency licensed in this state which is, providing adoption services or other services necessary for placing a child in an adoptive arrangement,
- c. bringing or causing to be brought into this state or sending or causing to be sent outside this state any child for the purpose of placing such child in a foster home or for the adoption thereof without first complying with the Interstate Compact on the Placement of Children. Provided, however, that this provision shall have no application to the parent or guardian of the child nor to a person bringing said child into this state for the purpose of adopting the child into such person's own family,
- d. the solicitation or receipt of any money or any other thing of value for expenses related to the placement of a child for the purpose of an adoption by the birth parent of the child who at the time of the

solicitation or receipt had no intent to consent to eventual adoption ~~or~~

- e. the solicitation or receipt of any money or any other thing of value for expenses related to the placement of a child for adoption by a woman who knows she is not pregnant but who holds herself out to be pregnant and offers to place a child upon birth for adoption,
- ~~e.~~ f. the receipt of any money or any other thing of value for expenses related to the placement of a child for adoption by a birth parent who receives, from one or more parties, an aggregate amount of One Thousand Dollars (\$1,000.00) or more in total value without first disclosing to each prospective adoptive parent, child-placing agency, or attorney the receipt of these expenses,
- g. advertising of services for compensation to assist with or effect the placement of a child for adoption or for care in a foster home by any person or organization except by the Department of Human Services, or a child-placing agency licensed in this state. Nothing in this paragraph shall prohibit an attorney authorized to practice law in Oklahoma from the advertisement of legal services related to the adoption of children, and
- ~~f.~~ h. (1) advertisements for and solicitation of a woman who is pregnant to induce her to place her child upon birth for adoption, except by a child-placing agency licensed in this state or an attorney authorized to practice law in Oklahoma. Nothing in this section shall prohibit a person from advertising to solicit a pregnant woman to consider adoptive placement with the person or to

locate a child for an adoptive placement into the person's own home, provided that such person has received a favorable preplacement home study recommendation in accordance with Section 7505-5.1 of ~~this title~~ Title 10 of the Oklahoma Statutes, which shall be verified by the signed written statement of the person or agency which performed the home study, and provided that no money or other thing of value is offered as part of such an inducement except as ordered by the court or except as otherwise provided by Section 7505-3.2 of Title 10 of the Oklahoma Statutes.

(2) Any person violating the provisions of this paragraph shall, upon conviction thereof, be guilty of a misdemeanor.

2. a. Except as otherwise provided by this subsection, the violation of any of the subparagraphs in paragraph 1 of this subsection shall constitute a ~~Schedule G~~ felony and shall be punishable by imprisonment of up to ten (10) years or a fine of up to Ten Thousand Dollars (\$10,000.00) per violation or both such fine and imprisonment.
- b. Prospective adoptive parents who violate subparagraph a of paragraph 1 of this subsection, upon conviction thereof, shall be guilty of a misdemeanor and may be punished by a fine not to exceed Five Thousand Dollars (\$5,000.00) per violation.
- c. The violation of subparagraph c of paragraph 1 of this subsection shall constitute a misdemeanor and may be punishable by a fine not to exceed Five Thousand Dollars (\$5,000.00) per violation.

B. 1. No person shall knowingly publish for circulation within the borders of the State of Oklahoma an advertisement of any kind in any print, broadcast or electronic medium, including, but not limited to, newspapers, magazines, telephone directories, handbills, radio or television, which violates subparagraph e g or f h of paragraph 1 of subsection A of this section.

2. Any person violating the provisions of this subsection shall, upon conviction thereof, be guilty of a misdemeanor and shall be punished by a fine not to exceed Five Thousand Dollars (\$5,000.00) per violation.

C. The payment or acceptance of costs and expenses listed in Section 7505-3.2 of Title 10 of the Oklahoma Statutes shall not be a violation of this section as long as the petitioner or birth parent has complied with the applicable procedure specified in Section 7505-3.2 of Title 10 of the Oklahoma Statutes and such costs and expenses are approved by the court.

D. Any person knowingly failing to file an affidavit of all adoption costs and expenses before the final decree of adoption as required by Sections 7505-3.2 and 7505-6.2 of Title 10 of the Oklahoma Statutes shall be guilty of a misdemeanor.

SECTION 5. This act shall become effective July 1, 2006.

SECTION 6. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

50-2-9536 SD 02/24/06